IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1788 of 2007
With
FIRST APPEAL No. 1789 of 2007
To
FIRST APPEAL No. 1793 of 2007
With
FIRST APPEAL No. 1802 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE SPECIAL LAND ACQUISITION OFFICER & 1 - Appellant(s)
Versus
PASHABHAI SHANABHAI PATEL & 2 - Defendant(s)

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Appearance :
MR SUNIT SHAH GP for Appellant(s) : 1 – 2 **IN FIRST APPEAL NO. 1788/07 TO 1790/07.**
MR SK PATEL for Defendant(s) : 1 – 3 **IN FIRST APPEAL**

NO. 1788/07.

Appearance :
MS MINI NAIR AGP for Appellant(s) : 1 – 2 **in First Appeal No.1791/07 to 1793/07** .
MR KM SHETH for Defendant(s) : 1 – 3 **in First Appeal No.1789/07 to 1793/07**.
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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

Date : 30/03/2007

ORAL JUDGMENT

1. Admitted.

2. Mr.S.K.Patel, learned advocate wavies service of notice on behalf of the claimants in First Appeal No.1788/07 whereas Mr.K.M.Sheth, learned advocate wavies service of notice on behalf of the claimant/claimants in First Appeal No.1789 to 1793/07 and First Appeal No.1802/07. Having regard to the facts of the case, the appeals are taken up for final disposal today.

3. What is challenged in these appeals filed under section 54 of the Land Acquisition Act, 1894 [“the Act” for short] read with Section 96 of the Code of

Civil Procedure, 1908 is the legality of common judgment and award dated September 9, 2005, rendered by learned 4th Additional Senior Civil Judge, Ahmeabad (Rural) at Navrangpura, Ahmedabad in Land Acquisition Case No.113/01 to 119/01, by which the claimants have been awarded additional amount of compensation at the rate of Rs.91.85 ps. per sq.mt. for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.7.50 ps. per sq.mt., by his award dated February 28, 1996.

4. The Executive Engineer, Narmada Project Canal, Division No.4, New Sachivalaya, Gandhinagar proposed to the State Government to acquire lands of village Limbadiya, Taluka and District: Gandhinagar for the public purpose of construction of canal under the Narmada project. On perusal of the said proposal, the State Government was satisfied that the lands of village Limbadiya specified in the said proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the Official

Gazette on September, 3, 1994. Necessary inquiry under Section 5 of the Act was made and a report as contemplated by section 5A (2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On the basis of the said report the State Government was satisfied that the lands of village Limbadiya, which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of a canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the Official Gazette of August, 14, 1995. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.200/- per sq.mt. However, having regard to the materials placed before him the Special Land Acquisition Officer by his award dated February 28, 1996 offered compensation to the claimants at the rate of Rs.7.50 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special

Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court Ahmedabad (Rural) at Ahmedabad, where they were registered as Land Acquisition Case Nos, 113/01 to 119/01.

5. On behalf of the claimants, witness Bhagwanbhai Marghabhai was examined at Exh.30. The witness mentioned in his testimony that the lands acquired were irrigated lands and that each claimant was earning net income of Rs.60,000/- per bigha per year from the sale of agricultural produces as each claimant was able to raise three crops in a year. The witness stated that earlier also lands were acquired from village Limbadiya for which the Reference Court had awarded compensation to the claimants at the rate of Rs.70/- per sq.mt. and produced the previous award of the Reference Court relating to the lands of village Limbadiya at Exh.27.

The witness further stated that the lands which were acquired previously from village Limbadiya and the lands which were acquired in the instant case were similar in all respects and, therefore, the previous award of the Reference Court relating to the lands of village Limbadiya should be made basis for the purpose of awarding enhanced compensation to the claimants.

6. Though this witness was cross-examined by the learned Counsel for the acquiring authorities at length, nothing substantial could be elicited nor the assertion made by the witness that the lands which were previously acquired from this very village were similar in all respects to the lands acquired in the instant case, could be demonstrated to be untrue.

7. On behalf of the acquiring authorities no witness was examined at all.

8. On the basis of evidence adduced by the claimants the Reference Court was of the opinion that previous award of the Reference Court relating to the

lands of this very village produced at Exh.27 was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. After placing reliance on the said previous award, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.91.85 ps. per sq.mt. by the impugned award, giving rise to the above numbered appeals.

9. This Court has heard Ms.Mini Nair, learned Assistant Government Pleader for the appellants and Mr.S.K.Patel, learned advocate as well as Mr.K.M.Sheth, learned counsel for the claimants at length and in great detail. This Court has also considered the paper-book supplied by the learned Counsel for the claimants, which includes oral as well as documentary evidence adduced by the claimants before the Reference Court.

10. It is true that the claimants could not make their assertion good that each claimant was earning net income of Rs.60,000/- per bigha per year from the

sale of the agricultural produces. However, the said fact pales into negligence in view of the fact that enhanced compensation was never claimed on yield basis. The record does not indicate that the claimants had claimed enhanced compensation on the basis of comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced compensation was previous award of the Reference Court relating to the lands of this very village which was produced at Exh.27. A perusal of Exh.27 makes it evident that the lands of village Limbadiya, Taluka and District: Gandhinagar were acquired for the public purpose of construction of Canal under Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act which was published in the Official Gazette on December 11, 1985. The record shows that the said notification was subsequently modified by another notification which was published on January 13, 1987. Therein, the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.3.50 ps per sq.mt. by his award date February 2, 1989. Feeling aggrieved, the claimants had sought

references. Accordingly, references were made to the District Court Ahmedabad (Rural) at Mirzapur. In those cases witness Trikambhai Marghabhai was examined at Exh.34, whereas on behalf of the acquiring authorities witness Ramanbhai Somabhai Patel was examined at Exh.39. On the basis of evidence adduced by the parties. Reference Court by judgment and award dated February 14, 1995 awarded additional amount of compensation to the claimants at the rate of Rs.66.50 ps. per sq.mt. The paper-book supplied by the learned counsel for the claimants indicates that the said award was challenged by the acquiring authorities in First Appeal No.4649/96 to 4658/96 and other cognate matters. The Division Bench of this Court by judgment dated July 22, 1997 held that the claimants were entitled to compensation at the rate of Rs.57/- per sq.mt. The record further shows that feeling aggrieved by the judgment of the High Court, the acquiring authorities had moved the Supreme Court and the Supreme Court by judgment dated February 13, 1998 rendered in Civil Appeal No.923 and 967 of 1998 reduced compensation payable to the claimants to Rs.53/- per sq.mt. It is well settled

that previous award of the Reference Court relating to a village which has attained finality can be relied upon as a good piece of evidence for the purpose of determining the market value of similar lands acquired subsequently from the same village. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on Exh.27 for thepurpose of determining the market value of the lands acquired in the instant case. However, on the basis of said award as modified by the Supreme Court this Court is of the opinion that the claimants would be entitled to the compensation at the rate of Rs.53/- per sq.mt. Further this Court finds that, notification under Section 4(1) of the Act was published in the Official Gazatte on January 13, 1987 in the earlier case whereas in the instant case it was published on September 3, 1994 and, therefore, in view of gap of about 7-1/2 years between the two notifications issued under Section 4 of the Act, the claimants would be entitled to the benefit of reasonable rise in price of the lands at the rate of 10% per annum. If so calculated, the claimants would be entitled to

compensation at the rate of Rs.92,75 ps. per sq.mt. and not at the rate of Rs.99.35 ps. per sq.mt as awarded by the Reference Court. Therefore, the appeals will have to be accepted in part.

11. For the foregoing reasons, all the appeals partly succeed. The judgment and award dated September 9, 2005 rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (Rural) at Ahmedabad in Land Acquisition Case No.113/01 to 119/01 awarding additional amount of compensation to the claimants at the rate of Rs.91.85 ps. per sq.mt for their acquired lands over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.7.50 ps. per sq.mt. by his award dated February 18, 1996, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.92.50 ps. per sq.mt for their acquired lands. The other benefits which are conferred by the impugned award on the claimants are not interfered with at all and are hereby confirmed. The appeals stand allowed only to the extent indicated hereinabove. There shall be no

orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.Panchal, J.]

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